

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NATS EMPEROR SHIPPING LIMITED,

Plaintiff,

v.

HAWKNET LIMITED and BROBULK
LIMITED,

Defendants.
-----X

:
:
: **DECLARATION IN**
: **ACCORDANCE WITH**
: **28 U.S.C. § 1746**
: **08 Civ. 3763 (BSJ)**
:

Timothy James Houghton, declares, under penalty of perjury, as follows:

1. I am a solicitor and a partner in the firm of Winter Scott of St Olave's House, Ironmonger Lane, London EC2V 8EY. Winter Scott are the London solicitors for Brobulk Ltd ("Brobulk").
2. I have reviewed the declaration of Mr John Hicks of Waterson Hicks dated 12th May 2008. Mr Hicks states that, prior to the creditors' meeting of 6th May 2008, the liquidator was not aware of the existence of Brobulk's loans and had not been provided with the relevant documents. In paragraph 8 of his declaration, Mr Hicks appears to blame Brobulk for this, stating that "*Nonetheless the transactions have been concealed from the Liquidator - although Winter Scott on behalf of Brobulk advised my firm on 29th April that full details of the transaction would be provided to the Liquidator, they had not been as of the date of the Creditor's Meeting nor, so far as I am aware, had they been*

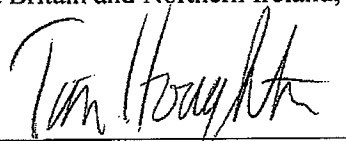
subsequently."

3. With respect, in paragraph 8 of his declaration Mr Hicks misrepresents what Winter Scott advised his firm on 29th April 2008. What we actually said in our fax of that date was that "*We wish to make it absolutely clear that our Clients will comply fully with any requests for information and documents made by the liquidator once he is appointed.*" If Mr Hicks thought that we were volunteering to try to guess what the liquidator would want to know, then that is a misunderstanding of what we said in our fax of 29th April 2008. I should add that neither we nor our Clients have received any request from the liquidator for further information or documents.

4. Brobulk have certainly not been concealing anything from the liquidator, if that is what the Plaintiff is attempting to insinuate. In fact, without any prompting by the liquidator, we wrote to him on 8th May 2008 to introduce ourselves as Brobulk's solicitors [TJH 1, page 1]. We added that Brobulk had received enquiries from, amongst others, Nats Emperor Shipping Ltd, whom we had told to contact the liquidator. We concluded by saying that "*If you require any further information from our Clients, please do not hesitate to contact us and we shall be very pleased to assist.*" We followed this up with a further message earlier today [TJH 1, page 2], in which we said we expected that the correspondence relating to the loans was on Hawknet's files, but if not or if the liquidator wanted any further information, they should contact us accordingly. I find it difficult to see how we could have been any more co-operative.

5. I should add that there has been some further correspondence with Waterson Hicks over the past week. To give the background, Brobulk has received the sum of US\$67,977.78 from Conagra. It is not clear what this sum represents, and why it was paid to Brobulk rather than to Hawknet. Waterson Hicks maintain in correspondence [TJH 1, pages 3 to 8] that it is freight under Hawknet's sub-charter with Conagra, and must be paid to Nats Emperor Shipping Ltd because they have asserted a lien over sub-freights. In our fax of 12th May 2008 (copied to the liquidator), we invited Waterson Hicks to discuss this matter with the liquidator, given that it seemed to us that there might be competing claims to the relevant sum [TJH 1, page 5]. As far as I can see from Waterson Hicks' fax dated 12th May 2008, they are refusing liaise with the liquidator [TJH, page 6], and are instead persisting in their demand that the relevant sum be remitted to them. We have therefore once again invited Waterson Hicks to seek to agree instructions with the liquidator as to whether the sum should be remitted to their Clients or alternatively the liquidator.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed in London, United Kingdom of Great Britain and Northern Ireland, on the 13th day of May, 2008.


Timothy James Houghton

TJH 1



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E-mail: firstname.lastname@winterscott.co.uk

FAX TRANSMISSION

DATE: 8th May 2008
TO: 020 7213 0480
Grosvenor Partners LLP
ATTENTION: M.P. Bassford Esq
FROM: Tim Houghton
OUR REF: TJH/nma/2/214
NO. OF PAGES: 1

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Dear Sirs,

Re: HAWKNET LTD

We write to confirm that we are the solicitors acting on behalf of Brobulk Ltd. We understand that you have been appointed to act as liquidator in Hawknet Ltd's creditors' voluntary liquidation, and that there was a creditors' meeting on 6th May 2008.

Our Clients have over the past few weeks received a number of enquiries from creditors of Hawknet, specifically McTaggart Shipping & Navigation Ltd, Nats Emperor Shipping Ltd and Braemar Seascope Ltd. We have directed their enquiries to you. If you require any further information from our Clients, please do not hesitate to contact us and we shall be very pleased to assist.

Yours faithfully,

WINTER SCOTT



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FAX TRANSMISSION

DATE: 13 May 2008
TO: 020 7213 0480
Grosvenor Partners LLP
ATTENTION: M.P. Bassford Esq

COPY TO: 020 7929 3748
Waterson Hicks
ATTENTION: John Hicks Esq

FROM: Tim Houghton
OUR REF: TJH/nma/2/214
NO. OF PAGES: 1

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Dear Sirs,

Re: MV "HAWKNET"

We write with regard to the secured loans which our Clients, Brobulk Ltd, made to Hawknet Ltd. We would expect that the correspondence relating to those loans will be on Hawknet's files, but Brobulk wish to confirm that if you require any further information about the loans, or if the relevant correspondence is for some reason unavailable to you, you should not hesitate to contact us.

Yours faithfully,

WINTER SCOTT

From: 02079293748 To: 77262371 Page: 1/1 Date: 07/05/2008 12:08:47



SOLICITORS

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Email : law@watersonhicks.com
Web : www.watersonhicks.com

FACSIMILE TRANSMISSION

DATE : 7 May 2008

PAGES : 1

TO : Winter Scott
ATTN : Tim Houghton/Christopher Wood
REF : TJH/nma/2/214
FAX : 020 7726 2371

FROM : John Hicks
REF : JWH/WB/1192-17

"NATS EMPEROR"

Thank you for your fax of 25th April.

Mr. Walker of Hawknet confirmed at the Creditors' Meeting on 6th May that no amounts are due to Brobulk from Hawknet, as we would have expected to be the case since we cannot imagine your clients would have paid nearly US\$2,000,000 to Hawknet if they felt they were owed a balance by Hawknet.

Accordingly the amount of US\$67,977.78 which you say your clients received from ConAgra was therefore the subject of a valid exercise of lien by our clients. There cannot be a right of set-off available in respect of this amount and these funds should therefore have been paid to our clients and should still be paid to our clients. You say that if there is no right of set-off then you will pay them to the Liquidator: if you still intend to do so will you please explain before doing so on what basis you would propose to pay them to the Liquidator rather than to our clients. Our clients maintain they should be paid to them.

Yours faithfully,

WATERSON HICKS

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J.W. Hicks, M.J. Wisdom, B.M. Isola, M.S. Aspinall, T.D. Baker, A.S. Ridings

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FAX TRANSMISSION

DATE: 12 May 2008
TO: 020 7929 3748
Waterson Hicks
ATTENTION: John Hicks Esq

COPY TO: 020 7213 0480
Grosvenor Partners LLP
ATTENTION: M.P. Bassford Esq

FROM: Tim Houghton
OUR REF: TJH/nma/2/214
NO. OF PAGES: 2

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Dear Sirs,

Re: MV "HAWKNET"

We refer to your fax dated 7th May 2008. For the benefit of the liquidator, reading in copy, Conagra have paid the sum of US\$67,977.78 which was apparently earned under Hawknet's sub-charter with Conagra, to Brobulk. We do not entirely understand why the money was paid to our Clients, but in any event they are presently holding it.

Brobulk is part of the GAC Group. We understand that Hawknet is indebted to GAC Bunker Fuels in respect of bunkers supplied to Hawknet. Our Clients have been considering whether it would be possible to assert any sort of set off of the bunker debt against the US\$67,977.78 presently held by Brobulk. Our Clients have concluded that there is no basis for such a set off.

The question therefore arises of whether the US\$67,977.78 should be paid to Hawknet's liquidator or to Waterson Hicks' Clients, who claim to have asserted a lien on

sub-freights. We should say at the outset that we are not sure whether the US\$67,977.78 actually represents sub-freights. We believe that it may be demurrage.

In any event, our Clients have no interest in the US\$67,977.78, and will leave Hawknet's liquidator and Waterson Hicks to discuss the question of to whom the money should be paid, and issue joint instructions accordingly. In the absence of agreement, it will of course be necessary for us to interplead.

Lastly, we wish to put on notice that we find it absolutely extraordinary that, in the light of the correspondence that has passed between this firm and Waterson Hicks and the information that has been provided by our Clients, the interests behind Nats Emperor Shipping Ltd should have thought it appropriate to allege that Brobulk is Hawknet's alter ego. That is completely untrue, as would have been clear from the most cursory review of the information that is publicly available from Companies House, which bears out what we ourselves have said about Brobulk's dealings with Hawknet. This matter is now the subject of an application in New York; but we would wish it to be well understood that we will not hesitate to take action in the event that this groundless allegation is repeated outside of the New York proceedings.

Yours faithfully,

WINTER SCOTT

From: 02079293748 To: 77262371 Page: 1/1 Date: 12/05/2008 17:23:03



SOLICITORS

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Email : law@waterstonhicks.com
Web : www.waterstonhicks.com

FACSIMILE TRANSMISSION

DATE : 12 May 2008

PAGES : 1

TO : Winter Scott
ATTN : Tim Houghton/Christopher Wood
REF : TJH/nma/2/214
FAX : 7726 2371

CC : Grosvenor Partners LLP
ATTN : Mr. M.P. Bassford
FAX : 7213 0480

FROM : John Hicks
REF : JWH/WB/1192-17

"NATS EMPEROR"

We refer to your fax of earlier.

The amount of US\$67,977.78 was paid by ConAgra to your clients separately since it was originally deducted from freight by way of loadport despatch which ConAgra recognised should not have been deducted from freight.

The amount was paid by ConAgra to your clients as freight. Owners served Notice of Lien over such subfreights on 18th April. As we advised you at the time it should then have been paid to our clients. Will you please now make arrangements to do so. Our Client Account details are as follows :-

Account : Waterston Hicks US Dollar Client Account
Account no. : WATHIC-USD1CL
Our Ref : JWH/1192-17
Bank : Royal Bank of Scotland plc
Sort Code : 15-20-25
Address : 5/10 Great Tower Street, London, EC3P 3HX
IBAN : GB71 RBOS 1663 0000 2425 04
IBAN BIC : RBOS GB 2L

Yours faithfully,

WATERSTON HICKS

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J.W. Hicks, M.J. Wisdom, B.M. Isola, M.S. Aspinall, T.D. Baker, A.S. Ridings

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FAX TRANSMISSION

DATE: 13 May 2008
TO: 020 7929 3748
Waterson Hicks
ATTENTION: John Hicks Esq

COPY TO: 020 7213 0480
Grosvenor Partners LLP
ATTENTION: M.P. Bassford Esq

FROM: Tim Houghton
OUR REF: TJH/nma/2/214
NO. OF PAGES: 2

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Dear Sirs,

Re: MV "HAWKNET"

Thank you for your fax dated 12th May 2008. We have no knowledge of the matters to which you refer and the validity of your alleged lien on sub-freights. We would repeat that you should discuss this matter with the liquidator. If the liquidator is content for us to pay the US\$67,977.78 as you have demanded, then we shall do so. However, given Hawknet's position and the existence of competing claims against its assets, it is necessary that your entitlement to the US\$67,977.78 should either be admitted by the liquidator, or established (possibly in the context of interpleader proceedings). Whilst you discuss the matter with the liquidator, please provide us with a copy of the Head Charter and the declaration of the lien on sub-freights, together with evidence that hire was outstanding at the time that the lien was asserted and evidence that the US\$67,977.78 was indeed freight. This will enable us to take a view on your various allegations.

Yours faithfully,

WINTER SCOTT